

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**IN RE: DIGITEK PRODUCT LIABILITY
LITIGATION**

MDL NO. 1968

THIS DOCUMENT RELATES TO ALL CASES

PROPOSED PRETRIAL ORDER NO. 34
REGARDING PRODUCTION OF MEDICAL AND PHARMACY RECORDS

Due to the difficulties the parties are experiencing in obtaining pertinent medical and pharmacy records on behalf of individuals who are deceased, the Court hereby enters Pretrial Order No. 34 regarding the production of medical and pharmacy records.

In accordance with 45 C.F.R. § 164.512(e) of the Health Insurance Portability & Accountability Act (“HIPAA”), the Court hereby orders the following:

(1) The health care covered entity identified in Exhibit A shall produce records to the requesting counsel or their designee, RecordTrak, for the dates specified on the form attached hereto as Exhibit A.

(2) Plaintiff’s counsel identified on Exhibit A is considered the “personal representative,” in accordance with 45 C.F.R. § 164.502(g)(4), of the deceased individual for the sole and limited purpose of collecting medical and pharmacy records. RecordTrak is authorized to collect the records on behalf of Plaintiffs counsel, or the requesting counsel.

(3) Counsel or their designee, RecordTrak, requesting records from health care covered entity on behalf of a deceased individual must complete Exhibit A, setting forth the name, date of birth, and social security number of the deceased individual, as well as the dates of service for those records he/she believes is reasonably related or believed to be related to the deceased’s use of Digitek® and/or potentially resulting health problems and/or conditions

relating to the use of such Digitek®. Counsel or RecordTrak must provide the health care covered entity a completed form Exhibit A, along with a copy of this Order.

(4) Counsel or RecordTrak shall pay reasonable costs to the health care covered entity for those costs associated with compliance with this Order, and in accordance with any applicable state law.

(5) By performing the obligations required by this Order, the health care covered entity is deemed to be in full compliance with HIPAA. *See* 45 C.F.R. §164.512(e).

IT IS SO ORDERED.

Dated: _____, 2009

Honorable Mary E. Stanley, United States
Magistrate Judge

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**EXHIBIT A TO PRETRIAL ORDER NO. 34
REGARDING PRODUCTION OF MEDICAL AND PHARMACY RECORDS**

To: _____

Pursuant to Pretrial Order No. ____ and in accordance with 45 C.F.R. § 164.512(e) of the Health Insurance Portability & Accountability Act ("HIPAA"), you are hereby ordered to produced the records of: Name: _____ (deceased)

Date of Birth: _____ SSN: _____

For the time period: _____

To Plaintiff's counsel: _____

Firm Name: _____

Address: _____

Phone/Fax: _____

Records requested: All medical records, including but not limited to, (*cross out any that you do not wish to receive*): office notes, history and physical, consultation reports, discharge summaries, discharge or transfer instructions or data, order and progress notes, laboratory results, nurses notes, emergency room records, operative reports/records, lab reports, incident reports, anesthesia records, arteriogram, venograms, angiograms, autopsy reports, billing records, code blue sheets/CPR method, progress notes, order sheets, outpatient clinic records, paramedic records, dialysis records, pathology reports, patient data cover sheet, personal property lists, pharmacy records, photographs, physical therapy sheet notes, post-op instrument count record, pre-op check list, recovery room records, scans, CAT, CT, and ultrasound records, surgical consent forms, vital signs charts, radiology studies/reports, x-ray reports.

Signature: _____ Date: _____
Plaintiff's Counsel, personal representative, pursuant to 45 C.F.R. §164.502(g)(4)